

### **REMARKS**

Reconsideration of the application as amended is respectfully requested.

Claims 1 through 6, 8, and 9 were pending in the application and have been rejected. Claim 7 was subject to a restriction requirement, was withdrawn from consideration, and has been cancelled. Claim 1, the broadest apparatus claim, has been rewritten to claim the subject matter that the inventors claim as their own more clearly. Claim 9 has been cancelled and Claims 10 through 22 have been added. Therefore Claims 1 - 6, 8, and 10 - 22 are pending in the application.

New Figure 5A is submitted to improve clarity. A marked up copy of Figure 5a showing the proposed changes in red is included. As suggested by the Examiner, new Figure 5B is submitted to aid in understanding the invention and illustrate all claimed features. Support for new Figure 5B can be found in paragraph [0023], therefore no new matter is believed to be included in the new drawing.

Changes to the specification were made to add a reference to the new drawing. A new description of drawings is included to correspond to the amended drawings. No new matter is believed to be included in the amended specification and drawings. Attached hereto is a marked-up version of the changes made to the specification, drawings and claims by the current amendment. The attached page is captioned "**Version with markings to show changes made.**"

In the Office Action summary accompanying the Examiner's comments, the status was indicated as responsive to the communication filed on March 19, 2002. Applicants assume the office action is actually responsive to the communication filed in August 2002 since the Examiner commented on Claim 9, which was first submitted in August 2002. The summary further indicated that the action was both final and non-final. Applicants assume the action was non-final since the Examiner indicated some claims that would be allowable if rewritten to include all the limitations of the base claim and any intervening claims. Moreover, nowhere in the detailed comments is there an indication that the action is final.

Other comments of the office action are summarized as follows:

Claims 1 and 5 are rejected under 35 U.S.C. §102(b) as being anticipated by Mueller et al.

Claims 2, 6, and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller et al.

Claims 3 and 4 are rejected under 35 U.S.C. §103(a) as being unpatentable over Mueller et al. in view of Scobie et al.

An object of the present invention is to provide a container for holding semi-liquid material, such as mud while permitting some amount of mud to fall through to aid in measuring the amount of mud deposited beneath the container. Another object is to provide separately adjustable legs to enable leveling of the container on non-level surfaces.

Applicants respectfully disagree with the Examiners characterization of the grille disclosed in Mueller et al. as being functionally equivalent to the plate disclosed in the present invention. Nevertheless, applicants have included additional limitations in independent Claim 1 to patentably distinguish the present invention from the cited art.

**I. Newly Added Claims 10 - 22**

The newly added claims emphasize and capture additional features of the invention that the Applicants claim as their own. In particular, new claims 18-22 incorporate the limitations of Claim 8 with the base claim and any intervening claims, as suggested by the Examiner. Applicants respectfully assert that the foregoing amendments put the claims in condition for allowance.

**II. The Rejections under 35 U.S.C. § 102(b)**

Applicants respectfully traverse the rejection.

Mueller et al. describes a frame that merely holds a wire apparatus used as a shelf and provides a means for attaching the shelving to a corner post. Mueller et al. does not disclose any limitations on the wire shelf related to the size, shape and spacing of the gaps between individual

wires of the grille. Therefore, Applicants respectfully traverse the rejection because the elements of the reference do not disclose all of the claim limitations of the present invention. Because Mueller et al. does not teach all claim limitations of the present invention, it does not anticipate the present invention.

Regarding claim 5, it is respectfully pointed out that claim 5 depends from claim 1, which, as described above, is patentably distinct from Mueller et al. Therefore, Applicants respectfully traverses the rejection because the elements of the reference do not disclose all of the claim limitations of the present invention.

### **III. The Rejection under 35 U.S.C. § 103(a)**

**Claims 2, 6, and 9 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mueller et al.**

Applicants respectfully traverse the rejection.

Regarding claim 2, the Office Action asserts that Mueller et al.'s non-circular apertures are functionally equivalent to Applicants' circular holes, and it would have been an obvious matter of design choice. Applicants respectfully traverse the rejection. Nothing in Mueller et al. teaches or even suggests that the non-circular holes are considered in the selection of the shelf material. Certainly, nothing in Mueller et al. discloses a size, shape or quantity limitation to the spacing of the wires in the grille.

Regarding claims 6 and 9, Applicants assert that claim 9 has been cancelled rendering the rejection moot and claim 6 is dependent upon independent claim 1, which as described above is patentably distinct over Mueller et al. Accordingly, Applicants respectfully suggest that claim 2 is allowable.

**Claims 3 and 4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mueller et al. in view of Scobie et al.**

Applicants respectfully traverse the rejection.

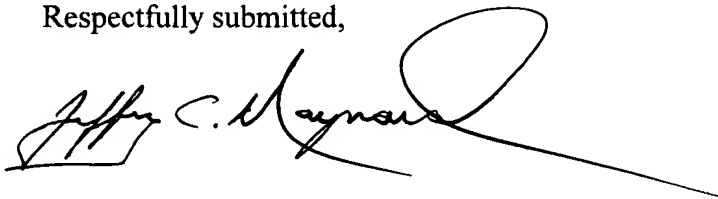
Applicants assert that all the claims rejected under 35 U.S.C. § 103(a) as being unpatentable over Mueller et al. are dependent upon independent claim 1, which as described above is patentably

distinct over Mueller et al. Accordingly, Applicants respectfully suggest that claim 3 and 4 are allowable.

**CONCLUSION**

Applicants have made a diligent effort to address the objections identified by the Examiner and to place the claims in condition for allowance. Applicants believe all claims remaining in the application are allowable. Accordingly, a Notice of Allowability is respectfully requested. However, if the Examiner is of the opinion that the present application is not in condition for allowance, Applicants respectfully request that the Examiner contact Applicants' attorney at the telephone number listed below so that additional changes may be discussed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey C. Maynard", with a long horizontal flourish extending to the right.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Group Art Unit: 3635

Vadim V. Mikhaylenko *et al.*

Serial No. 09/786,000

Examiner: Steve M. Varner

Filed: 02/15/2001

For: APPARATUS AND METHOD FOR APPLYING SETTING MATERIAL

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION

Please enter the following paragraph immediately after paragraph [0017]:

-- **FIG. 5b** is an exploded perspective view illustrating an alternate embodiment of the studs or legs of the present invention.--

Please replace paragraph [0029] with the following rewritten paragraph:

--[0029] A sketch shown in **FIG. 5**, illustrates how the spherical head **40** is mounted to the leg **35**. **FIG. 5a** illustrates a sketch of the mounting of the threaded stud **50** having knob **45** through hole **55** of sleeve **25**. **FIG. 5b** illustrates an alternate embodiment in which leg **35** is threaded so that leg **35** may be threadedly inserted through the circumferential plate **10**.--

IN THE CLAIMS

Please Amend Claim 1 as follows:

1. (Twice Amended) An apparatus for applying setting material comprising:
  - a. a container comprising

- i. a horizontal plate having a top surface for holding such setting material, such plate having a plurality of apertures therein, such apertures being sized and shaped and of a selected number to enable a [predetermined] controlled amount of such setting material to pass therethrough, wherein such remaining top surface of such plate prevents such remaining setting material from passing; and
  - ii. a circumferential wall coupled to a top portion of said plate, wherein such circumferential wall extends above such plate;
- b. at least four hollow sleeves coupled to said container; and
  - c. an adjustable leg inserted through each of said sleeves.

New Claims: Please add new claims 10 - 22 as follows:

- 10. (New) The apparatus of claim 1, wherein said hollow sleeves are coupled to said circumferential wall of said container.
- 11. (New) The apparatus of claim 1, wherein said hollow sleeves are located above said horizontal plate.
- 12. (New) The apparatus of claim 1, wherein said hollow sleeves are substantially perpendicular to said horizontal plate.
- 13. (New) The apparatus of claim 1, said plate having a peripheral edge, wherein said circumferential wall is coupled to said plate inward of said peripheral edge forming a circumferential plate outside such circumferential wall, wherein all of said apertures are located inside said circumferential wall.

14. (New) The apparatus of claim 13, wherein said hollow sleeves are located on said circumferential plate.

15. (New) The apparatus of claim 13, wherein said hollow sleeves are coupled to said circumferential plate of said container.

16. (New) The apparatus of claim 13, wherein said leg goes through said circumferential plate of said container.

17. (New) The apparatus of claim 1, wherein said circumferential wall is sufficiently tall to prevent such setting material from falling out of said container.

18. An apparatus for applying setting material comprising:

d. a container comprising

iii. a substantially rectangular horizontal plate for holding such setting material, such plate having a plurality of apertures therein to enable a predetermined amount of such setting material to pass therethrough;  
and

iv. a circumferential wall coupled to a top portion of said plate, wherein such circumferential wall extends above such plate;

e. at least four hollow sleeves coupled to said container at approximately the middle of each side of said wall; and

f. an adjustable leg inserted through each of said sleeves.

19. (New) The apparatus of claim 18, wherein such apertures are sized and shaped and of a selected number to enable a controlled amount of such setting material to pass therethrough.

20. (New) The apparatus of claim 18, said plate having a peripheral edge, wherein said circumferential wall is coupled to said plate inward of said peripheral edge forming a circumferential plate outside such circumferential wall, wherein all of said apertures are located inside said circumferential wall.
21. (New) The apparatus of claim 18, wherein said hollow sleeves are located on said circumferential plate.
22. (New) The apparatus of claim 18, wherein said leg goes through said circumferential plate of said container.



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Fig. 5A

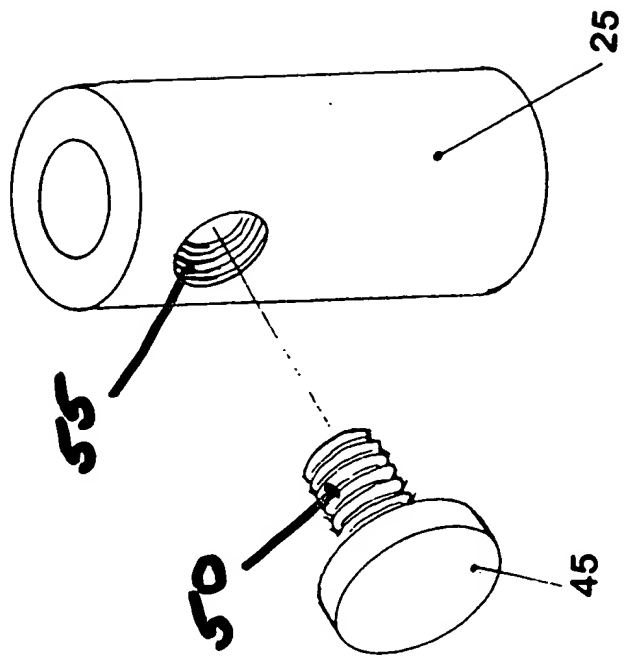


Fig. 5

